

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1171 OF 1993

Vasant P. Patil

...Petitioner

vs.

I.I.T., Powai, Mumbai & Others

...Respondents

Shri M.P.Vashi for the Petitioner.

Shri K.P.Jain with Mr.A.I.Talegaonkar i/b M/s.B. Kanga
& Girdharlal for Respondent No.1.

Mr.Y.R.Mishra with Mr.Y.S.Bhatye for Respondent Nos.2 & 3

CORAM : SMT.RANJANA DESAI & ABHAY S.OKA, JJ.

DATE ON WHICH LAST ARGUMENTS WERE HEARD:9th DECEMBER,2005.

DATE OF PRONOUNCEMENT OF JUDGMENT: 13th JANUARY 2006

1. By this Petition under Article 226 of Constitution of India the Petitioner has taken exception to the action of the first Respondent of removing him from service.

2. With a view to appreciate the submissions made by the learned Counsel appearing for the parties it will be necessary to briefly refer to the facts of the case. The Petitioner joined the employment of the first Respondent as a Compounder in October 1959. Later on the Petitioner was promoted as Store Keeper. His promotion to the post of Store Keeper was confirmed on 3rd November 1968 in the pay scale of Rs.150-320. With effect from 1st April 1978, the Petitioner was upgraded as Office Assistant in the scale of Rs.425-800. The Petitioner continued to work in the hospital of the first Respondent-Indian Institute of Technology. Some time in the month of April 1981, the Petitioner was transferred from the hospital to the Central Stores of the first

Respondent. The Petitioner handed over charge on 18th June 1981. The Disciplinary proceeding was commenced against the Petitioner by serving memorandum dated 23rd November 1983 along with statement of Articles of charge, Statement of Imputations of misconduct and list of documents on the basis of which Articles of charge were sought to be proved. The Petitioner submitted a detailed reply dated 26th December 1983. An Enquiry Officer was appointed by the first Respondent for holding enquiry. The Enquiry Officer submitted a report dated 12th October 1990. The Enquiry Officer came to the conclusion that the charges against the Petitioner were established. On the basis of the report of the Enquiry Officer, notice dated 19th April 1991 was issued to the Petitioner. In the said notice it was stated that the board of the first Respondent has accepted the report of the Enquiry Officer and has proposed to impose following penalties:

a) Recovery of Rs.1,44,545.59 being the total loss caused to the first Respondent on account of default by the Petitioner.

b) Removal from service.

By the said notice the Petitioner was called upon to show cause as to why the proposed penalties should not be imposed. The Petitioner submitted a detailed reply dated 29th April 1991 to the show cause notice. The first Respondent by a Memorandum dated 22nd July 1991 informed the Petitioner that the Board of the first Respondent has resolved to impose the following penalties on the

Petitioner :

1) Recovery of sum of Rs.1,44,545.59

2) The Petitioner shall be removed from service of the first Respondent with effect from afternoon of the 22nd July 1991.

3. The Petitioner preferred an Appeal against the order of imposing penalty. By communication dated 29th March 1993, the Petitioner was communicated the decision of the Appellate Authority. By the said decision, penalty of removal from service was upheld. However, the amount of recovery was reduced to one year's basic pay in terms of Government of India decision 27 (c) given below Rule 11 of the C.C.S.(CCA) Rules, 1965. The challenge in this Petition is to the order of the Disciplinary Authority as well as the order of the Appellate Authority.

4. Shri Vashi, learned Counsel for the Petitioner submitted that the employer i.e. the first Respondent failed to adduce any evidence before the Enquiry Officer and without there being any evidence led before the employer, the Petitioner was forced to lead evidence. He submitted that as the charges against the Petitioner are mainly about misappropriation, in absence of any evidence led by the employer, said charges cannot be accepted as proved by any stretch of imagination especially when no evidence was adduced by the employer. He placed reliance on the decision of Division Bench of this Court reported in 2005 (4) Mh.L.J. page No.960 (Union of India Vs. C.M.Amrute), in support of his

contention. He also placed reliance on decision of Rajasthan High Court reported in AIR 1963 Rajasthan 57 (Ramlal Vs. Union of India and another). Relying on the decision of the Apex Court reported in A.I.R. 1969 Supreme Court page 983 (Central Bank of India Ltd. Vs. Prakash Chand Jain), Shri Vashi submitted that though the Enquiry Officer was not bound by the strict rules contained in the Evidence Act, he should not have ignored substantive rules which form part of the principles of natural justice. He submitted that merely because provisions of Evidence Act are not applicable, requirement of employer establishing the case of misappropriation is not dispensed with. Shri Vashi submitted that though the enquiry proceeding was started in the year 1984, enquiry was concluded in the year 1990 and thus, the entire enquiry is vitiated by gross delay.

5. Shri Jain, learned Counsel for the Respondent No.1 submitted that the entire case of the Respondent No.1 is based on documentary evidence. Some of the factual allegations against the Petitioner were admitted by him in reply to the show cause notice. He submitted that there is a clear explanation for delay in the conclusion of the enquiry. He pointed out that the employer relied upon the voluminous documentary evidence which was required to be examined by the Enquiry Officer and large number of witnesses were examined. He submitted that the documentary evidence on record has established the allegations of misappropriation. He placed reliance on the certain decisions of the Apex Court and submitted that considering the facts of the

case, delay is not fatal. Reference has been made to the decisions relied upon by Shri Jain in the later part of this Judgment.

6. The learned Counsel for the Respondent No.2 supported the impugned orders and adopted submissions made by Shri Jain, learned Counsel for the Respondent No.1.

7. We have considered the submissions. There were twelve charges framed against the Petitioner. Perusal of the enquiry report shows that according to the Enquiry Officer most of the charges were established. Charge No.1 framed against the Petitioner was that the Petitioner deliberately omitted to enter the supply received by him against the purchase order placed by the Central Stores in main stock Ledger of the Institute. According to the Enquiry Officer loss to the tune of Rs.23,658.96 was caused to the first Respondent. Charge No.2 is regarding negligence shown by the Petitioner as he failed to account for the supplies of gum boots, rain coats etc.. The said Charge was proved and it was observed by the Enquiry Officer that the negligence has caused financial loss to the first Respondent. The third charge is that the Petitioner deliberately omitted from the main ledger the account of the stores purchased by him against cash for I.I.T. hospital of the value of Rs.12,856.76. This charge has been accepted as proved by the Enquiry Officer. Charge No.4 was relating to the gross negligence in casting his stock ledgers and thereby showing lesser balance of large number of items.

According to the Enquiry Officer, the said charge has been accepted by the Petitioner by stating that he was overburdened with the work and therefore, he did not carry out the checking of total store casting on second occasion. The charge No.5 is that during the period from 1st April 1979 to 19th June 1981 while functioning in the 'Store Unit' of the hospital, the Petitioner committed misappropriation of stores by unauthorisedly adding the items in the requisitions received by him and posting their issue in the stock ledgers without actually issuing such items. The Enquiry Officer observed that during the course of enquiry, the Petitioner has given various reasons like pressure of work, urgent oral requests. He found that the Petitioner made unauthorised corrections in the requisitions received by him and made postings in stock ledger without issuing the items. According to the Enquiry Officer the sixth charge has not been established. Therefore, we are not referring to the same. Charge No.7 is relating to the to entry in the stock ledgers of issue of stores which were not included in the requisitions received by the Petitioner. The Enquiry Officer held that the charge is proved by observing that the Petitioner admitted to have not obtained requisite requisitions in support of the entries made by him in the stock ledger. The conclusion drawn by the Enquiry Officer is that the Petitioner committed serious irregularities. Charge No.8 is relating to misappropriation of large quantities of stores from the hospital by inserting additional digits before/after the indented quantities written in figures on the copy of the requisitions and posted inflated quantities either in full or in

part in the stock ledgers. The Enquiry Officer found that the Petitioner accepted the charge of inflating the figures as well as posting of the same in the stock ledger. According to the Enquiry Officer, thus serious dishonesty and utter negligence on the part of the Petitioner has been established. The Enquiry Officer found that even the ninth charge regarding misappropriation of stores by posting in the stock ledger in excess of the quantity actually issued has been established. Charge No.10 related to misappropriation of stores by entering in the stock ledgers issue of certain items not actually issued by the petitioner. The said charge is held to be proved and it has been held that financial loss is caused to the first Respondent. Charge No.11 is relating to gross negligence in posting shown by the Petitioner by omitting to post in his stock ledger of issue of large number of items actually issued by the Petitioner and in some cases of posting lesser quantity than actually issued by him. The Enquiry Officer has observed that the Petitioner has not given explanation for the said lapses. Charge No.12 alleges that at the time when the Petitioner handed over the charge of the post of the Store Keeper of the hospital to one Shri S.R.Apte, it was revealed that large number of items handed over to the Petitioner were short and the said items were valued at Rs.60,770.80. The said charge is also held to be proved.

8. Perusal of the Enquiry Report shows that the conclusions in the report are based on the documentary evidence in the form of relevant registers and ledgers produced before the Enquiry

Officer. The Enquiry Officer has relied upon the admissions given by the Petitioner. The Enquiry Officer has set out as to how monetary loss was caused to the first Respondent due to negligence on the part of the Petitioner. Shri Vashi tried to submit that quantification of loss in the sum of Rs.1,44,545.59 made is without any basis. However, perusal of the report shows that the loss is quantified on the basis of separate findings recorded on every charge. In any event, the order of the Disciplinary Authority of directing recovery of the said amount has been modified by the Appellate Authority. It is a settled position that in departmental proceedings, Disciplinary Authority is the sole Judge of the facts and in case an Appeal is presented to the Appellate Authority, the said Authority has also a power to re-appreciate the evidence and come to its own conclusion. The High Court in writ jurisdiction may not normally interfere with those factual findings unless the findings are based either on no evidence or that the findings were wholly perverse and/or legally untenable. In a Petition under Article 226 of Constitution of India, adequacy or inadequacy of the evidence before the Disciplinary Authority cannot be permitted to be canvassed while exercising the power of judicial review. The High Court cannot substitute its own opinion in regard to the guilt of the delinquent for that of the disciplinary authorities. Even in so far as penalty or punishment is concerned, unless it is shown that punishment or penalty is either disproportionate or such that it shocks the conscience of the Court, normally it should not be substituted by the High Court. The said proposition can be found

in the decision of the Apex Court in (1999) 1 SCC 759 (Apparel Export Promotion Council Vs. A.K.Chopra). The Apex Court in another decision in the case of R.S.Saini Vs. State of Punjab, (1999) 8 S.C.C. Page 90 held that if there is some evidence to reasonably support the findings of the enquiring authority, the court in exercise of its writ jurisdiction would not reverse the finding on the ground of insufficiency of evidence.

9. As pointed out earlier in the present case, the conclusions drawn by the Enquiry Officer are based on documentary evidence on record. There is a reference of large number of documents including main ledger, stock ledger, requisitions received by the Store department and other documents. The Enquiry Officer has relied upon certain admissions of the Petitioner. It will be necessary to refer to the reply filed by the Petitioner in response to the Memorandum served upon him. While dealing with the charge Nos.5 to 11 the Petitioner has stated thus :

. "Charge Nos.5 to 11 : Charge mentioned against Sr.No.5 to 11 I deny the alleged charges therein, as far as ledger posting concerned the mistakes have occurred due to pressure of work as stated above with reference to the requisitions's changings were made on the basis of oral information received by me on many occasions the medicines were taken out without my knowledge and also without mentioning correct quantities drawn in the requisitions slips which has caused additions and alterations in the

figures. All this work was done full faith."

Considering the charges, reply filed by the Petitioner and the findings recorded by the Enquiry Officer, it is impossible to come to the conclusion that it is a case of no evidence. Since the Enquiry Officer considered the entire documentary evidence on record, it cannot be said that the findings recorded by him are perverse or legally untenable. So far as the conclusions of the Enquiry Officer are concerned, no interference can be made under Article 226 of Constitution of India.

10. Coming to the submissions regarding gross delay, it must be noted here that the enquiry proceedings commenced on 13th January 1984 and the report was submitted on 12th October 1990. The report itself discloses that the Enquiry Officer held 51 sittings during the period from January 1984 to August 1990. The Petitioner examined 23 witnesses before the Enquiry Officer. In the report, the Enquiry Officer referred to voluminous documents including ledgers and other registers. Looking to the magnitude of the enquiry it cannot be said that there is a gross delay in completion of the proceedings which has the result of vitiating the enquiry. In a decision of the Apex Court in State of Andhra Pradesh Vs. Radhakishan, (1998) 4 SCC page 154, Apex Court held that it is impossible to lay down any predetermined principles applicable to all situations where there is a delay in concluding the disciplinary proceedings. The Apex Court held that while considering the question whether on the ground of delay

disciplinary proceedings are to be terminated, each case has to be examined on the facts and circumstances in that case. The Apex court held that the Court has to take into consideration all relevant factors and weigh them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to be terminated on account of delay. It must be noted here that considering the magnitude of the enquiry and number of hearings held by the Enquiry Officer, it cannot be said that there is an unreasonable delay. Considering the facts and circumstances of the case and especially the allegations regarding misappropriation against the Petitioner who was working in the store of the hospital of the first Respondent, enquiry cannot be set aside only on the ground of delay.

11. It cannot lay down as absolute proposition of law that in every departmental proceedings the employer is required to lead oral evidence for establishing the charges. In the present case, the charges were based on record maintained by the Petitioner himself which was before the Enquiry Officer. Apart from this fact, there were admissions on the part of the Petitioner. The Petitioner was permitted to rely on the documents and was permitted to examine as many as 23 witnesses. Therefore, it cannot be said that there is a breach of principles of natural justice.

12. In so far as quantum of punishment is concerned, considering the fact that the allegations against the Petitioner are of

misappropriation and considering the fact that the Petitioner was a Store Keeper in the hospital run by the first Respondent, it cannot be said that punishment is dis-proportionate to the charges established. In our view no interference is called for under Article 226 of Constitution of India. Petition is accordingly rejected with no order as to costs.

(SMT.RANJANA DESAI,J.)

(ABHAY S. OKA,J.)